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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,952	02/27/2002	Dustin Kirkland	AUS920020019US1	5349

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EXAMINER

LY, CHEYNE D

ART UNIT PAPER NUMBER

2168

DATE MAILED: 04/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/087,952	<b>Applicant(s)</b> KIRKLAND, DUSTIN	
	<b>Examiner</b> Cheyne D. Ly	<b>Art Unit</b> 2168	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 December 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3, 5-7, 10-20, 22-26, 29-37 and 39-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-7, 10-20, 22-26, 29-37, 39-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. Applicants' arguments filed December 09, 2005 have been fully considered but they are not deemed to be persuasive. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

2. The addition of new claims 44-50 has been acknowledged.

3. Claims 1-3, 5-7, 10-20, 22-26, 29-37, 39-50 are examined on the merits.

#### *Claim Rejections - 35 USC § 112*

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1-3, 5-7, 10-18, 25, 26, 29-35, 42, 44-46, 48, and 49 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. **NEW MATTER.**

6. The instant rejection has been necessitated by claim amendments.

7. Claim 1, lines 11 and 15, recite the limitation of "average total amount of time" which has not been found in the instant specification. It is noted that the instant specification (paragraphs [0053], [0054], [0057], [0061], [0066], etc.) describes the claimed invention with

respect to the generic limitation of “average” time, which does not provide written basis for the new limitation. The same issue is present in claims 25 and 42.

8. Claim 45, line 2, recites the limitation of “average time calculations offline” which has not been found in the instant specification. It is noted that the pointed to support (pages 18-19) describes the claimed invention with respect to the limitation of “minimum/maximum/average wait time calculations offline”, which does not provide written basis for the new limitation.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in:

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10. Claims 19, 20, 22-24, 36, 37, 39-41, 43, 47, and 50 are rejected under 35 U.S.C. 102(e) as being Chmaytelli et al. by (US 20020194325A1) (Chmaytelli hereafter).

11. This rejection is maintained with respect to claims 19, 20, 22-24, 36, 37, 39-41, and 43 as recited in the previous office action mailed September 21, 2005. The instant rejection has been extended to new claims 47 and 50 as necessitated by claim amendments.

12. In regard to claim 19, Chmaytelli discloses a method of generating an estimate of an amount of time required to retrieve or prepare requested content, comprising:

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- a. Receiving a request for content, the request including one or more parameters (paragraphs [0047] and [0071]);
- b. Identifying previously completed request information regarding a previously completed request based on the one or more parameters, the information including a time required to retrieve or prepare the content of the previously completed request (paragraphs [0047], [0071], [0052], and Figure 5a);
- c. Generating a minimum, maximum, and average time estimate of an amount of time required to retrieve or prepare the requested content based on the previously completed request information (paragraphs [0047] and [0071], and Figure 5b).
- d. Outputting the graphical representation on a display device (paragraphs [0060] and [0071], and Figure 5b).

It is noted that the cited Figure 5b discloses different estimate of time wherein the value of 4.9 minutes has been interpreted as “minimum” and 5.2 as “maximum.”

13. In regard to claim 20, Chmaytelli discloses identifying previously completed request information includes using a table lookup in a previously handled content request table (Figure 5a).

14. In regard to claim 22, Chmaytelli discloses generating the minimum, maximum, and average time estimate of an amount of time required to retrieve or prepare the requested content includes generating the time estimate based on a time to retrieve or prepare content identified in the previously completed request information (paragraph [0052]), a system load at the time of the previously completed request (paragraph [0052], lines 4-7), and a current system load (paragraph [0052], lines 7-11).

15. In regard to claim 23, Chmaytelli discloses storing a new entry in the previously handled request table for the request content (paragraphs [0052]-[0054], and Figure 5a).

16. In regard to claim 24, Chmaytelli discloses transmitting the time estimate to a client device (paragraphs [0048]-[0051]).

17. In regard to 47, Chmaytelli discloses the table lookup includes a first and second table, and wherein the first table includes one new entry for each content request (Figure 5a), and wherein the second table includes one new entry for each unique content request that contains minimum, maximum, and average time calculations for each unique content request (Figure 5b).

18. In regard to claims 36, 37, 39-41, 43, and 50, Chmaytelli discloses the computer program product and apparatus for the implementing the above-cited method (paragraphs [0029]-[0044]).

## **RESPONSE TO ARGUMENTS**

19. On pages 14-22, Applicant's arguments are directed to claims 1-3, 5-7, 10-18, 25, 26, 29-35, and 42 are moot because said claims have been withdrawn from the instant prior art rejection as necessitated by the claim amendments.

20. In regard to claims 19, 20, 22-24, 36, 37, 39-41, 43, 47, and 50, Applicant argues that "Chmaytelli does not identically teach each and every element recited in amended claim 1...the rejection of independent claims 1, 19,... as being anticipated by Chmaytelli has been overcome" (PAGE 19). Applicant's argument is not persuasive because claim 19 and dependent claims therefrom do not recite the amended limitations as argued by Applicant.

Therefore, claim 19 and dependent claims therefrom are anticipated by Chmaytelli as discussed above.

### **CONCLUSION**

21. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

22. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

23. Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to


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confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public.

24. For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199. The USPTO's official fax number is 571-272-8300.

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Dune Ly, whose telephone number is (571) 272-0716. The examiner can normally be reached on Monday-Friday from 8 A.M. to 4 P.M.

26. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tim Vo, can be reached on (571) 272-3642.

C. Dune Ly   
Patent Examiner  
3/28/06

  
**TIM VO**  
**PRIMARY EXAMINER**